

United States Department of Agriculture



Natural Resources Conservation Service
655 Parfet Street, Room E200C
Lakewood, Colorado 80215

VIA ELECTRONIC MAIL

COLORADO BULLETIN NO.: CO-440-06-03

Date: April 20, 2006

SUBJECT: PGM - Expiration of WHIP 61F Funds for Fiscal Year (FY)
2001 Contracts

TO: Area Conservationists (AC)
District Conservationists (DC)
Area Resource Conservationist-Programs (ARC-P)

PURPOSE: To inform Area and District Conservationists about the expiration
of FY 2001 Wildlife Habitat Incentives Program (WHIP) contracts
at the end of FY 2006.

EXPIRATION DATE: September 30, 2006

ACTION REQUIRED BY: May 1, 2006
June 23, 2006
July 1, 2006
September 1, 2006
September 8, 2006

File Code: 440-8

The Natural Resources Conservation Service (NRCS) authority to disburse funds set aside in the account for FY 2001 WHIP contracts (61F) expire on September 30, 2006. On this date, all remaining balances in this account for these contracts, both obligated and unobligated, will be canceled and returned to the general fund of the U.S. Treasury. In order to consolidate Agency gains and focus technical assistance funds, the Agency has chosen a course of action for closing out these contracts. Prior to September 30, 2006, emphasis must be placed on getting all conservation practices in these contracts applied. However, we also recognize that cancellation or termination may be necessary where participants are unable or unwilling to meet the contract requirements.

Action by May 1, 2006: Field offices will review all active FY 2001 WHIP 61F funded contracts (Attachment A) and provide each participant written notification of their remaining options. Attachment A summarizes the current status of FY 2001 WHIP contracts with "open

obligations.” The attached letters are to be used for this notification. Field offices should schedule additional follow-up if the participant is not responsive to this notice.

The following options will be offered to each active FY 2001 contract participant:

1. **Urge participants** to make every effort to complete WHIP contracts by September 1, 2006.
2. **Provide participants** an opportunity to request cancellation of their contract no later than July 1, 2006.
 - a. **District Conservationist will complete NRCS-LTP-153 for contract cancellation requests** (according to Amended Colorado Bulletin CO-300-06-02 dated November 21, 2005)
 - b. **District Conservationist will submit the LTP-153 to the Assistant State Conservationist for Programs (ASTC-P) by June 23, 2006**, in order for the State Conservationist to prepare appropriate cancellation letters.

The State Conservationist will inform the participant of the approval of the cancellation request in writing, including the forfeiture of all future payments under the contract (Section 9 of the Special Provisions to Form NRCS-LTP-2), and repayment requirements to complete the process.

Cancellation in accordance with 7CFR 636.11, Termination of Cost-Share Agreements: the NRCS may, by mutual agreement with the parties to the cost-share agreement, consent to the termination of the contract. If the participant is unable to comply with the terms of the cost-share agreement as the result of a hardship beyond their control or if compliance would cause a severe hardship on the participant, cancellation of the contract may be approved if the State Conservationist determines approval is in the public interest, without recovering any previously paid financial assistance.

If a cost-share agreement is terminated in accordance with the provisions of this section, the State Conservationist may allow the participants to retain any cost-share payments received under the cost-share agreement in a proportion appropriate to the effort the participant has made to comply with the cost-share agreement or, in cases of hardship, where forces beyond the participant's control prevented compliance with the cost-share agreement.

3. **If the participant** takes no action or does not respond to the first letter **by July 1, 2006**:
 - a. **District Conservationist will complete NRCS-LTP-153 for contract termination** (according to Amended Colorado Bulletin CO-300-06-02 dated November 21, 2005)
 - b. **District Conservationist will also submit the LTP-153 to the ASTC-P by June 23, 2006**, in order for the State Conservationist to prepare appropriate termination letters.
 - c. The NRCS must send the participant the second letter stating that the contract is being terminated for cause (has not requested acceleration of contract implementation or has not requested cancellation).
 - d. After 30 days, or no later than September 1, 2006, send the third letter indicating the contract has been terminated.

Termination shall be in accordance with 440-Conservation Program Manual (CPM), Part 512, Section 512.57, the Special Provisions, and the WHIP regulation at 7 CFR 636.12.

Termination in accordance with 7 CFR 636.12 – Violations and Remedies: If after NRCS provides sufficient opportunity for the participant to correct the contract violations (7CFR636.12 (a) (1)), (including not implementing the contract in accordance with the terms and conditions), NRCS may terminate the contract in accordance with 7 CFR636.12 (a) (2). NRCS may **not** assess liquidated damages for breach of a WHIP contract.

Documentation for cancellation or termination of contracts should be in accordance with 440-CPM, Part 512, Section 512.57(b) and (c); and 440-CPM, Part 517, Section 517.45 b and c.

4. **If the District Conservationist can verify** that all conservation practices have been implemented on schedule and the participant is unable or unwilling to accelerate those practices scheduled after 2006, States may establish a new contract in ProTracts during FY 2007.
 - a. This new contract will provide funds for the remaining practices in the FY 2001 WHIP contract and will use FY 2007 funds.
 - b. These contracts will not be subject to the application/ranking process.
 - c. A list of contracts and estimated funding needs for these expiring contracts must be submitted to the ASTC-P no later than **September 8, 2006**. (The ASTC-P will forward the information to the Director of the Financial Assistance Programs Divisions by September 15.)

Participant Notification of Action:

Attached are five (5) letters for use in notifying WHIP participants of the options for addressing the completion of their contract responsibilities. These letters are as follows:

- **May 1, 2006** – “First” Letter (**DC prepares**) to WHIP participants stating that the statutory authority for their FY 2001 61F funded contract expires on September 30, 2006, and providing options for their action on the contract.
- **July 1, 2006** – “Second” Letter (**STC Prepares**) to WHIP participants that did not respond to the initial letter. This letter states that their contract is now in the process of being terminated and provides details to the participant on cost recovery provisions and provides limited appeal rights to the participant. **This letter must be sent by certified mail.**
- “Third” Letter – (**STC Prepares**) to WHIP participants confirming that their contract has been terminated.
- “Fourth” Letter – (**STC Prepares**) to WHIP participants that have requested cancellation. **This letter must be sent by certified mail.**
- “Fifth” Letter – (**STC Prepares**) to WHIP participants confirming by mutual agreement cancellation of contract.

Contracts identified on the list that are expired, cancelled or terminated need to have the following information noted and returned to the ASTC-P by May 1, 2006. Notation needs to be made of contract status and the dollar amount of any excess funds left in the contract after all CIN's have been certified and paid. Indicate dollar amount needing to be released.

A handwritten signature in cursive script, reading "Edward M. Biggers, Jr.", is centered within a light gray rectangular box.

EDWARD M. BIGGERS, JR.
Acting State Conservationist

Attachments

DIST: A. F, ARC-P

Interdisciplinary review: _____ STC-P _____ Contracting Spec.

FINAL:NRCS:Acting ASTC-P:DDOTY:dwk:04/17/06